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United States

Circuit Court of Appeals

For the Ninth Circuit.

S. D. PINE,

Appellant,

vs.

EAST BAY MUNICIPAL UTILITY DISTRICT,
GEORGE C. PARDEE, GRANT D. MILLER,
DAVID P. BARROWS, JAMES H. BOYER and
ALFRED LATHAM, Individually and as Directors
of the EAST BAY MUNICIPAL UTILITY DIS-
TRICT, JOHN H. KIMBALL, Individually and
as Secretary of Said District, and of the Board of
Directors Thereof, and GEORGE C. PARDEE, as
President of the Board of Directors of Said District,
Appellees.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.

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GEORGE C. PARDEE, GRANT D. MILLER,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

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Attorneys for Plaintiff and Appellant.

T. P. WITTSCHEN, Esq., 608-10 Ray Building,
Oakland, Calif.,
Attorney for Defendants and Appellees.
[1*]

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division.

IN EQUITY—No. 1566.

S. D. PINE,

Plaintiff,

vs.

EAST BAY MUNICIPAL UTILITY DIS-
TRICT, GEORGE C. PARDEE, GRANT
D. MILLER, DAVID P. BARROWS,
JAMES H. BOYER and ALFRED LA-
THAM, Individually and as Directors of
EAST BAY MUNICIPAL UTILITY DIS-
TRICT, JOHN H. KIMBALL, Individually
and as Secretary of said District and of the
Board of Directors Thereof, GEORGE C.
PARDEE, as President of the Board of
Directors of said District, STEPHEN E.

*Page-number appearing at foot of page of original certified Tran-
script of Record.

KEIFFER, TWOHY BROS., T. E. CONNOLLY, SMITH BROTHERS, PELTON COMPANY, CHARLES K. THOMPSON, LYNN S. ATKINSON, Jr., FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, SIXTH DOE, SEVENTH DOE, JOHN DOE COMPANY, RICHARD ROE COMPANY, SAM STOWE COMPANY, JAMES ROE COMPANY, and THOMAS DOE COMPANY,
Defendants.

COMPLAINT IN EQUITY TO ENJOIN THE
LETTING OF CONTRACTS.

To the Honorable the Judges of the District Court
of the United States in and for the Northern
District of California, Southern Division.

The plaintiff herein, S. D. Pine, above named, brings this bill of complaint against the defendants above named and respectfully alleges:

I.

That at all the times herein mentioned the plaintiff was and now is a citizen of the State of California and of the United States and a resident of the City of Berkeley in the County of Alameda, State of California, and a duly and regularly [2] register elector therein.

II.

That at all the times herein mentioned the plaintiff was and now is an owner of record of an interest in real estate in said City of Berkeley and a taxpayer therein and in said County of Alameda.

III.

That the defendant East Bay Municipal Utility District is, and ever since the 22d day of May, 1923, has been, a municipal utility district duly and regularly organized and existing under the Act of the Legislature of the State of California, entitled, "An Act to provide for the organization, incorporation and government of municipal utility districts, authorizing such district to incur bonded indebtedness for the acquisition and construction of works and property, and to levy and collect taxes to pay the principal and interest thereon," approved May 23, 1921.

IV.

That the following municipalities of the State of California compose said defendant East Bay Municipal Utility District, to wit, the cities of Oakland, Berkeley, Alameda, Piedmont, San Leandro, Albany and Emeryville, in the County of Alameda, State of California, and the cities of Richmond and El Cerrito, in the County of Contra Costa, in said state; that no unincorporated territory is included within the boundaries of said district; that all of the territory in said East Bay Municipal Utility District is situated either within said County of Alameda or said County of Contra Costa, and that the greater portion thereof is situate within said County of Alameda. [3]

V.

That James H. Boyer, Alfred Latham and Grant D. Miller are, and ever since the said 22d day of May, 1923, have been, duly elected, qualified

and acting directors of said East Bay Municipal Utility District, and that George C. Pardee and David P. Barrows are, and ever since the 13th day of November, 1924, have been, duly elected, qualified and acting directors of said district, and that James H. Boyer, Alfred Latham, Grant D. Miller, George C. Pardee and David P. Barrows constitute the board of directors thereof, and that said George C. Pardee is the president of said district, and John H. Kimball is the secretary thereof.

VI.

That the plaintiff's aforesaid interest in real estate in said City of Berkeley is subject to taxation by said defendant East Bay Municipal Utility District under the terms of the Act under which said district is organized and that said interest in said real estate has already been taxed by said defendant said East Bay Municipal Utility District and will be continued to be taxed thereby.

VII.

That by resolution of the board of directors of said East Bay Municipal Utility District adopted at a meeting thereof held on the 21st day of August, 1924, said board of directors determined that the public interest and necessity demanded the acquisition of a source or sources of water supply for said district and other properties to be used by said district for acquiring and impounding water for said district and for conveying the same thereto; that thereafter said board of directors [4] procured some plans and estimates of the cost of original construction and completion by

said district of said utility and had the same prepared for it in the form of a report by an engineer; that thereupon said board of directors adopted said plans and estimates and said report and with reference to said report found and designated the Mokelumne River in the State of California as a source of water supply for said district; that said plans and estimates and said report, among other things, covered the construction of a dam on the Mokelumne River at a point called Lancha Plana and the construction of conduits from said dam to the San Pablo Reservoir at the eastern boundary of said district for the purpose of storing and diverting water from said Mokelumne River to said San Pablo Reservoir to supply said district with water; that said estimates specified thirty-nine million dollars (\$39,000,000) as the estimated cost of said project including dam, reservoir site, rights of way, pumping plants, and conduits.

VIII.

That said plans and estimates provide that said conduit shall proceed from the point below the Lancha Plana dam in a direct line west of the City of Stockton in the County of San Joaquin, State of California, to a point near the town on Holt in said County of San Joaquin, thence in a general westerly direction in a straight line parallel to the main line of the Atchison, Topeka and Santa Fe Railroad to a point near Orwood in the County of Contra Costa, State of California, and thence along various courses and distances to said San Pablo Reservoir; that said conduit in passing

by said City of Stockton and proceeding to said point at Orwood, will cross the main channel [5] of the San Joaquin River, Middle River, Old River and numerous sloughs, canals, and drainage and irrigation ditches in the San Joaquin Delta; and that between said points said conduit will be within the boundaries of the Sacramento and San Joaquin Drainage District as established by the Legislature of the State of California under an Act approved December 24, 1911, entitled as follows: "An act approving the report of the California Debris Commission transmitted to the Speaker of the House of Representatives by the Secretary of War on June 27th, 1911, directing the approval of plans or reclamation along the Sacramento River or its tributaries or upon the swamp lands adjacent to said river, directing the state engineer to procure data and make surveys and examinations for the purpose of perfecting the plans contained in said report of the California Debris Commission and to make report thereof, making an appropriation to pay the expenses of such examinations and surveys, and creating a reclamation board and defining its powers"; that said district has not applied to the Reclamation Board of the State of California for a permit to construct said conduit through said Sacramento and San Joaquin Drainage District or through said San Joaquin Delta or along the line herein specified and designated in said plans and estimates and that it is not known whether or not said Reclamation Board will grant permission to said dis-

districts to build said conduits across said San Joaquin Delta along said specified line or along any other line.

IX.

That said project covered by said plans and estimates, by and through the construction of said dam, involves the appropriation and use of lands belonging to the United States of [6] America; that as prerequisite to the construction of said dam and reservoir and the maintenance thereof the said district has applied to the Federal Power Commission for a permit and license to appropriate and use the lands of the United States of America for the purpose of said project under the terms of the Federal Water Power Act approved June 10, 1920, and that said application to said Federal Power Commission is now pending and undetermined.

X.

That in order to secure the right to appropriate waters of the Mokelumne River the said district has also applied to the Board of Public Works, State of California, Division of Water Rights for a permit to appropriate water of said Mokelumne River at said Lancha Plana dam site and said application for said permit is now pending before said Division of Water Rights.

XI.

That said district has not obtained at this time and does not own any right to appropriate any water of the Mokelumne River and has not yet obtained and does not have any authority whatever

from the United States of America to make use of said lands of said United States of America.

XII.

That said applications before the Division of Water Rights and said Federal Power Commission have been protested by numerous persons, corporations and reclamation districts and hearings thereon are now being conducted jointly by said division of Water Rights and said Federal Power Commission in the City of Sacramento, State of California, and said hearings have not yet been concluded and what the outcome thereof will be is entirely unknown. [7]

XIII.

That said project covered by said plans and estimates is not a project for the production of power but is a project solely for the bringing of additional water supplies from the Mokelumne River to said District.

XIV.

That said conduit between the points mentioned in Paragraph VIII of this bill of complaint will cross three navigable rivers, to wit: The main channel of the San Joaquin River, Middle River, and Old River and several navigable sloughs and that commerce is carried on, upon, along and over said rivers and channels between Stockton, Antioch, San Francisco and other towns and cities within the counties of Sacramento, San Joaquin, Contra Costa, Napa, Marin, Alameda and San Francisco; that said East Bay Municipal Utility District has not obtained from the War Department of the

United States any permit to build said conduit across said navigable channels and it is not now known whether or not said district may ever be able to acquire said permit.

XV.

That said district has not acquired a permit from the California Debris Commission for the construction of said conduit between the points mentioned in said Paragraph VIII and that it is not known whether or not said district will ever be permitted by said California Debris Commission to build said conduit across said San Joaquin Delta.

XVI.

That the plaintiff herein does not know the names of the defendants who are sued herein as First Doe, Second Doe, Third [8] Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, John Doe Company, Richard Roe Company, Sam Stowe Company, James Roe Company and Thomas Doe Company and requests that when the true names of said defendants have been ascertained then this bill of complaint may be amended accordingly.

XVII.

That several months ago said district called for bids for the construction of said project in accordance with said plans and estimates and specified that said bids would be opened on the 4th day of September, 1925; that prior to the said 4th day of September, 1925, numerous bids were made to said district for the construction of said project and for the construction of various portions

thereof; that all of the defendants named, except said district and the defendant officials thereof, made bids on said project or various portions and parts thereof for the construction thereof; that said bids were opened on the said 4th day of September, 1925, but that as yet no contracts have been awarded to said defendants or to any of them or to any of said bidders; that since the opening of said bids the engineer and officials of said district have been studying said bids for the purpose of determining to whom contracts should be awarded and that said engineer and said officials of said district are now ready to award contracts on said bids as based upon the investigations and studies made by them of and concerning said bids; that the board of directors of said District will hold a meeting on the evening of Friday, September 25, 1925, to take official action with reference to said bids and the awarding of contracts thereon and that said board of directors propose at said meeting to award contracts on said [9] bids with reference to the construction of said project and parts and portions thereof.

XVIII.

That a majority of the voters and not a majority of the electors of said district has approved the construction of said project and has also approved the issuance of bonds of said district to the extent of thirty-nine million dollars (\$39,000,000) to pay for the construction thereof and that said district is now ready to finance the construction of said project by the issuance and sale of said bonds.

XIX.

That other applications are pending and are now being heard before said Federal Power Commission and said Division of Water Rights for the use of the waters of said Mokelumne River for power purposes by the construction of said dam and reservoir at Lancha Plana and that said applications are prior in time to the said application of said defendant district.

XX.

That the following Federal questions are involved in said action:

(a) Whether or not the proposed conduit can be built across said San Joaquin Delta as herein described without the permission of the California Debris Commission first had and obtained;

(b) Whether or not the proposed conduit can be built across said San Joaquin Delta as herein described without the consent of the War Department of the United States first had and obtained;

(c) Whether or not the Federal Power Commission can issue any permit or license to said district for the use of said [10] federal lands for the purposes for which said district proposes to use the same;

(d) Whether or not the Federal Power Commission can issue a license under the Federal Water Power Act where the applicant, under its organic act, cannot accept the provisions of Section 14 of the Federal Water Power Act;

(e) Whether or not said Federal Power Commission can issue a license to an applicant which,

under its organic act cannot subject its property to the acquisition, forfeiture, control and appropriation by the United States as provided under the terms of the Federal Water Power Act.

XX.

That the plaintiff herein does not know the citizenship or residence of any of the defendants other than the officials of said district and Stephen E. Keiffer; that the defendant officials of said district and said Stephen E. Keiffer are citizens and residents of the State of California and the United States of America and reside within the defendant district.

XXI.

That all of the bidders to whom contracts may be awarded as herein alleged have been made and now are defendants in this action.

XXII.

That the amount of the bid of each defendant herein for the construction of all or part or portion of said project exceeds the sum or value of three thousand dollars (\$3,000) exclusive of interest and costs.

XXIII.

That the letting of any contract for the construction [11] of works which will later have to be abandoned by the district because of inability to procure the necessary permits and licenses as herein set forth will subject said district to damages, costs and expenses in large amounts and the construction of any of said project which will later have to be abandoned because of the district's

inability to procure said licenses and permits will be a waste of funds of the district in very large amounts and that until said district has obtained said permits and licenses said district should be enjoined from letting any contracts or spending any moneys in connection with the construction of said project or any parts or portions thereof in order that thereby a waste of public moneys may be prevented.

XXIV.

That answer hereto under oath is hereby expressly waived.

WHEREFORE, plaintiff prays the judgment and decree of this Court:

1. That any contracts let by said defendant district prior to the time that said district has obtained all of the permits and licenses herein mentioned are void and without effect.

2. That said district shall not let any contracts for the construction of said project or any portion or portions thereof until said district has obtained all of the licenses and permits herein mentioned.

3. That said Federal Power Commission is unable to issue and the defendant district is unable to accept any license under the Federal Water Power Act for the proposed project of the defendant district and that defendant district shall not [12] construct said Lancha Plana dam and reservoir and shall not build said conduit therefrom.

4. That the defendant district herein shall not let any contract or contracts or expend any funds

for the construction of said project or any part or portion thereof.

5. That the defendant officials of said district shall likewise be enjoined with said district and that the other defendants herein shall likewise be enjoined from entering into any contracts with said district for the construction of said project or any part or portion thereof.

6. That the plaintiff herein shall have such other relief as the equity of the case may require and to this Honorable Court may seem meet.

Plaintiff also prays that proper process shall issue forthwith out of and under the seal of this Honorable Court directed to said defendants commanding them to appear and make answer to this bill of complaint and to perform and abide by such order and decree herein as to this Court may seem required by the principles in equity and good conscience.

S. D. PINE,
Plaintiff.

HADSELL, SWEET & INGALLS,
Attorneys for Plaintiff.

State of California,
City and County of San Francisco,—ss.

On this 25th day of September, 1925, before me came S. D. Pine, the plaintiff named in the foregoing bill and he, being by me duly sworn, did depose and say:

That he has read the foregoing bill and knows its contents and that the same is true of his own knowledge except as [13] to the matters therein

stated on information and belief and as to those matters he believes it to be true.

S. D. PINE.

Subscribed and sworn to before me this 25th day of September, 1925.

[Seal] MINNIE V. COLLINS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Sep. 25, 1925. [14]

(Title of Court and Cause.)

NOTICE OF MOTION FOR ORDER DISMISS-
ING BILL OF COMPLAINT.

To S. D. Pine, Complainant in the Above-entitled
Action, and to Messrs. Hadsell, Sweet and In-
galls, His Solicitors:

You, and each of you, will please take notice that on Monday, the 15th day of February, 1926, at the hour of ten o'clock A. M. of said day at the courtroom of the above-entitled court, Division No. 3 thereof, in the City and County of San Francisco, State of California, Defendants, East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as Directors of the East Bay Municipal Utility District, John H. Kimball, individually and as Secretary of said District, and of the Board of Directors thereof, and George C. Pardee as President of the Board of Directors of

said District, will move said Court for an order dismissing the bill of complaint on file herein. Said motion will be made and based upon this notice and upon all the grounds stated in the written motion to dismiss hereto attached and made a part hereof by reference, upon all the papers, records and files on file in the above-entitled matter, upon the affidavit of Geo. C. Pardee hereto attached and upon points and authorities hereafter to be served upon you prior to the hearing.

Dated: February 8th, 1926.

T. P. WITTSCHEN,
Solicitor for said Moving Defendants. [15]

(Title of Court and Cause.)

**MOTION TO DISMISS OF THE EAST BAY
MUNICIPAL UTILITY DISTRICT ET AL.**

Comes now the East Bay Municipal Utility District, a corporation, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as Directors of the East Bay Municipal Utility District, John H. Kimball, individually and as Secretary of said District, and of the Board of Directors thereof, and George C. Pardee as President of the Board of Directors of said District, named among others as defendants in the bill of complaint in the above-entitled suit, and respectfully move the Court for an order to dismiss such suit as to the said defendants and each of them, upon the following grounds, to wit:

I.

That the said bill of complaint does not state facts sufficient to constitute a valid cause of action in equity.

II.

That the said bill of complaint does not state facts alleging any fraud or misconduct on the part of any of the said defendants appearing herein or any facts which would justify the action of this Court in restraining the said defendants and officers of said East Bay Municipal Utility District from exercising the individual judgment and discretion which they are entitled to exercise as the duly elected, qualified, and acting officers and directors of said District, as aforesaid.

III.

That said bill of complaint is predicated upon the fact that the complainant is a taxpayer in said District, and [16] will be prejudiced and injured by reason of the amount of taxes he will have to pay in the event that the business and affairs of said District are conducted in the manner complained of. That it nowhere appears in said bill of complaint what the amount of taxes are that said complainant has paid, or will pay, in the event the said contracts are carried out; that the assessed value of the property of said complainant is not stated, nor is the assessed value of all of the property in said District stated, in order that the Court may ascertain what is the proportion that said complainant's property bears to the whole; nor is there any allegation that the complainant

has paid or will be required to pay, taxes to the amount of Three Thousand Dollars (\$3,000).

IV.

That this Court is without jurisdiction to hear and entertain the said suit, in that the amount in controversy does not equal or exceed the sum of Three Thousand Dollars (\$3,000), and that there are no facts alleged showing that the amount in controversy does not exceed or amount to said sum.

V.

That there are no facts alleged sufficient to show that there is any federal question involved in this suit, nor any case or controversy arising under the constitution or laws of the United States. That the matters complained of concern the execution of the discretion and good faith of the Board of Directors of said District, as to how they will conduct and manage the affairs of said District, and the alleged maladministration of the affairs of said District does not raise a federal question sufficient to confer jurisdiction upon this [17] Court.

VI.

That there are no facts stated sufficient to show how any of the matters alleged in Paragraph XX, raise any federal question; that the control of the federal Government over its public lands and navigable waters is not disputed and it is not required that there be any construction thereof; the sole matter involved in the suit is the right of the defendant District and those defendants who are officers and directors thereof to manage and conduct

the affairs of the District in accordance with their judgment and discretion; that this is not a federal question, and no facts are alleged which make it such.

VII.

That said complainant in this suit is not the proper party in interest, in that he has no direct interest as an officer or member of any public body or commission, state or federal, which is concerned with any rights of the state or federal Government referred to in the bill of complaint, and is not suing on behalf of any such.

Dated: February 8th, 1926.

T. P. WITTSCHEN,

Solicitor for said Defendants.

Received a copy of the within this 8th day of Feb., 1926.

HADSELL, SWEET & INGALLS,

By D. O. HADSELL,

Attorney for Plaintiff.

[Endorsed]: Filed Feb. 8, 1926. [18]

(Title of Court and Cause.)

AFFIDAVIT OF GEO. C. PARDEE.

State of California,

County of Alameda,—ss.

George C. Pardee, being duly sworn, deposes and says:

That he is the President of the Board of Directors of the East Bay Municipal Utility District;

that said District is a municipal corporation of the state of California formed pursuant to an act entitled "An Act to provide for the organization, incorporation and government of municipal utility districts, authorizing such districts to incur bonded indebtedness for the acquisition and construction of works and property, and to levy and collect taxes to pay the principal and interest thereon," approved May 23, 1921 (Statutes 1921, page 245).

That the boundaries of said District are coincident with the corporate limits of the cities of Richmond and El Cerrito, in the County of Contra Costa, and of Albany, Berkeley, Piedmont, Emeryville, Oakland, Alameda, and San Leandro, in the County of Alameda, State of California; the population of said District as shown by the 1920 census is 334,298 and that the population of the said district at the present time is between four and five hundred thousand people.

That the electors of said District heretofore approved a project for bringing water to said District from the Mokelumne River, voting bonds for such purpose to the extent of \$39,000,000; that the validity of said bonds was contested in the Superior and Supreme Courts of the State of California and their validity sustained, the decision of said Supreme Court [19] becoming final on the 23d day of September, 1925; that the proceeds of said bonds are being devoted to the consummation of the project of the District.

That the said cities comprising said District and the inhabitants thereof are menaced by a very se-

rious situation with reference to their water supply; that the local supplies are wholly inadequate and it is imperative that work for a new supply from a distant source be diligently prosecuted; that during the dry season of 1924 the runoff from the local streams supplied only a small porportion of the demands of the District, the balance being supplied from wells pumping from the underground supply in Alameda County, said wells being situated near the shore of San Francisco Bay; that the draft on said wells during said year was so great that the water level was reduced to many feet below sea level, causing an infiltration of salt water from the Bay into certain of said wells to such an extent that the water could only be used by a mixture with pure water; that if occasion should demand a renewal of said abnormal draft there is danger of ruining the entire supply through the infiltration of salt water.

That the need for a larger and more dependable supply was recognized by the East Bay Water Company, the public service corporation which at present supplies the said cities and the inhabitants thereof with water; that by reason of said conditions said corporation in the year 1925 did petition the Railroad Commission of the State of California for leave to issue securities to the amount of \$10,000,000, in order to bring a new supply of water from the lower Sacramento River to said District; that a hearing was held on said petition and the petition was denied by said Railroad Commission because this [20] district (appearing in

said proceedings in opposition to said petition of said corporation) promised that it would immediately proceed to bring in such supply without delay and would with all possible dispatch construct the aqueduct lines and tunnels between the District and the San Joaquin River, so that, if there were a shortage, an emergency supply could be pumped from said river to the said District; that said pumping would take place during the flood flow of said river and when there was an abundance of water in said stream, which with proper treatment could serve as an emergency supply for said District; that such construction work between the boundaries of the District and the said San Joaquin River will tie in with and will ultimately be a part of the aqueduct lines to the Mokelumne River and would be necessary in any event for almost any other distant supply for the District.

That by reason of the understanding had between the officials of the District and the State Railroad Commission immediately upon said litigation concerning the validity of said bonds becoming final the said District entered into contracts for the construction of that part of its project which was west of the San Joaquin River; contracts were also let for the work east of the San Joaquin River, but all of said contracts for work east of the River contained a clause that no work should begin until ordered by the District and in and by such contracts the District reserved the right to cancel the same at any time before ordering said work to begin; that said clause was put

into said contracts in order to protect the District in the event any contingency arose which might necessitate a change in its plans; that while said contracts were not awarded and signed until after a formal award was made [21] by the Board of Directors of said District the day this suit was filed, the Board agreed with the contractor who was the successful bidder on the greater portion of said work on the terms of said contracts and a letter to that effect was on file with the District prior to any knowledge the District had of this suit and prior to its filing.

That the Board of Directors of said District is charged with the responsibility of providing for the needs of said District; that in the exercise of the discretion committed to them the said Board of Directors did let said work and contracts to the extent herein provided; that in the unanimous opinion of said Board this action was necessary and in the best interests of the District.

That the District has pending before the Division of Water Rights of the State of California applications for permits to use the waters of the Mokelumne River for municipal and power purposes; that there is no reason to believe same will not be granted; that the District and its officers have consulted and advised with several duly licensed, qualified and practicing attorneys at law of this state and are advised by such attorneys that under the laws of this state the District is entitled to such permits; that under all the circumstances the Board concluded that the best interest

of said District were conserved by diligently prosecuting said work.

GEO. C. PARDEE.

Subscribed and sworn to before me this 8th day of February, 1926.

[Seal] T. P. WITTSCHEN,
Notary Public in and for the County of Alameda,
State of California.

Received a copy of the within this 8th day of Feb. 1926.

HADSELL, SWEET & INGALLS,
D. HADSELL,
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 8, 1926. [22]

(Title of Court and Cause.)

NOTICE OF MOTION FOR FURTHER AND
BETTER PARTICULARS UNDER EQUITY
RULE No. 20.

To S. D. Pine, Complainant in the Above-entitled
Action, and to Messrs. Hadsell, Sweet and In-
galls, His Solicitors:

You, and each of you, will please take notice that on Monday, the 15th day of February, 1926, at the hour of ten o'clock A. M. of said day, at the court-room of the above-entitled court, Division No. 3 thereof, in the City and County of San Francisco, State of California, Defendants, East Bay Municipal Utility District, George C. Pardee, Grant

D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as Directors of the East Bay Municipal Utility District, John H. Kimball, individually and as Secretary of said District, and of the Board of Directors thereof, and George C. Pardee as President of the Board of Directors of said District, will move said Court for an order requiring the complainant to furnish further and better particulars of certain matters set forth in the bill of complaint on file herein as will more particularly appear from the motion of said defendants, a copy of which is hereto attached and made a part of this notice by reference. Said motion will be made and based upon this notice, and upon all the papers, records and pleadings, on file in the above-entitled court and cause.

Dated: February 8th, 1926.

T. P. WITTSCHEN,

Solicitor for said Moving Defendants. [23]

(Title of Court and Cause.)

MOTION FOR FURTHER AND BETTER
PARTICULARS UNDER EQUITY RULE
No. 20.

East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as Directors of the East Bay Municipal Utility District, John H. Kimball, individually and as Secretary of said District, and of the Board of Direc-

tors thereof, and George C. Pardee as President of the Board of Directors of said District, having heretofore appeared in this suit with a motion to dismiss the bill of complaint, and without in any manner waiving, but expressly insisting upon said motion, and upon each and every one of the grounds therein set forth, and reserving all of their rights in said motion, and reserving the right to again present said matters to this Court upon or before the final hearing of this suit, and also reserving their right to be heard upon said questions in any appeal that may hereafter be taken, now appear specially herein, and respectfully move the Court for further and better particulars of the following matters set forth in said bill of complaint:

I.

That in Paragraph II of said complaint, it is mentioned that the complainant was and is an owner of record of an interest in real estate in the City of Berkeley, and a taxpayer therein, and in the County of Alameda. These defendants request that there be stated the nature of the interest in real property of the said plaintiff, the assessed value of said real property, and the amount of taxes that the said complainant [24] has paid thereon for District purposes for any of the years immediately last past.

II.

In Paragraph VI it is stated that complainant's interest in real estate in the said City of Berkeley is subject to taxation and has been taxed, and will continue to be taxed by the said defendant District.

The defendants respectfully request that the complainant be required to state the full particulars with reference to his said property, namely, the assessed valuation thereof, the amount that it has already been taxed, for the purposes of said defendant District, and the proportion that the assessed value of the property of said complainant bears to all of the taxable property in said District.

III.

That in Paragraph XX it is claimed that certain federal questions are involved in this suit. That the said complainant be required to set forth the particulars in which any federal question is involved, whether he is an officer of any of the State or Federal Departments mentioned in said Paragraph XX; whether he is suing on behalf and by the authority of any of the State or Federal Commissions mentioned in said paragraph and how, or in what manner, the administration by the defendants as Directors of said District, and the exercise of their discretion in the letting of contracts for and on behalf of said District, raises any federal question.

Dated: February 8th, 1926.

T. P. WITTSCHEN,
Solicitor for the Defendants Appearing by This
Motion.

Received a copy of the within this 8th day of Feb. 1926.

HADSELL, SWEET and INGALLS,

By D. O. HADSELL,

Attorney for Plaintiff.

[Endorsed]: Filed Feb. 8, 1926. [25]

(Title of Court and Cause.)

NOTICE OF MOTION FOR LEAVE TO FILE
AMENDED AND SUPPLEMENTAL BILL
OF COMPLAINT.

To the Defendants Above Named, East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, Individually, and as Directors of East Bay Municipal Utility District, John H. Kimball, as Secretary of Said District and of the Board of Directors Thereof, and George C. Pardee, as President of the Board of Directors of Said District, and to T. P. Wittschen, Their Attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on Monday, the 15th day of March, 1926, at the hour of ten o'clock A. M., of said day, at the courtroom, in the above-entitled court, Division 3 thereof, in the City and County of San Francisco, State of California, the plaintiff herein, S. D. Pine, will move said Court for an order permitting, authorizing and directing the plaintiff herein to file an amended and supple-

mental bill of complaint herein, as will more particularly appear from the motion of said defendant, a copy of which is hereto attached and made a part of this motion by reference.

Said motion will be made and based upon this notice and the attached motion and attached proposed amended and supplemental bill of complaint and upon all of the papers, records and pleadings now on file in the above-entitled court in this cause.

D. O. HADSELL,

JOE G. SWEET,

E. A. INGALLS,

Attorneys for Said Moving Plaintiff.

Dated: March 5, 1926. [26]

(Title of Court and Cause.)

MOTION FOR LEAVE TO FILE AMENDED
AND SUPPLEMENTAL BILL OF COM-
PLAINT.

S. D. Pine, plaintiff in the above-entitled cause, respectfully moves the Court for leave to file herein an amended and supplemental bill of complaint, which is attached hereto and served and filed herewith.

This motion is made upon the grounds that transactions material to this cause have occurred since the filing of the original bill of complaint herein; that since the filing of said bill of complaint plaintiff herein has obtained definite knowledge and information upon matters which were unknown to plaintiff

at the time of filing said bill of complaint; that the filing of said amended and supplemental bill of complaint will be in furtherance of justice and that additional allegations are proper in order more particularly to show the existence of the jurisdictional amount in controversy and also of the existence of the federal question.

D. HADSELL,
JOE G. SWEET,
E. A. INGALLS,
Attorneys for Plaintiff.

Dated: March 5, 1926. [27]

(Title of Court and Cause.)

AMENDED AND SUPPLEMENTAL COMPLAINT IN EQUITY TO ENJOIN THE LETTING OR PERFORMANCE OF CONTRACTS.

To the Honorable the Judges of the District Court of the United States in and for the Northern District of California, Southern Division.

The plaintiff herein, S. D. Pine, above named, files this amended and supplemental bill of complaint against the defendants above-named and respectfully alleges:

I.

That at all the times herein mentioned the plaintiff was and now is a citizen of the State of California and of the United States and a resident of the City of Berkeley in the County of Alameda,

State of California, and a duly and regularly registered elector therein.

II.

That at all the times herein mentioned the plaintiff was and now is an owner of record in an interest in real estate in said City of Berkeley and a taxpayer therein and in said County of Alameda; that said real estate is a house and lot situated at 3048 College Avenue in said City of Berkeley; that at all times herein mentioned said real estate was and now is owned by plaintiff and his wife and was and now is assessed to plaintiff and his wife; that on the last equalized assessment of said real estate for county purposes and the purposes of said district the assessed value thereof was fixed at \$3400.00; that the amount of tax last levied on said real estate for the purposes of defendant district was at the rate of thirteen cents (13¢) per hundred dollars of assessed valuation; that plaintiff has paid and continues to pay from plaintiff's own [28] income all taxes levied against said real estate.

III.

That the defendant East Bay Municipal Utility District is, and ever since the 22d day of May, 1923, has been, a municipal utility district duly and regularly organized and existing under the Act of the Legislature of the State of California, entitled "An act to provide for the organization, incorporation and government of municipal utility districts, authorizing such districts to incur bonded indebtedness for the acquisition and construction

of works and property, and to levy and collect taxes to pay the principal and interest thereon," approved May 23, 1921; that the following municipalities of the State of California compose said defendant East Bay Municipal Utility District, to wit: the cities of Oakland, Berkeley, Alameda, Piedmont, San Leandro, Albany and Emeryville, in the County of Alameda, State of California, and the cities of Richmond and El Cerrito, in the County of Contra Costa, in said state; that no unincorporated territory is included within the boundaries of said district; that all the territory in said East Bay Municipal District is situated either within said County of Alameda or said County of Contra Costa, and that the greater portion thereof is situate within said County of Alameda; that the total assessed value of all property within said district for district purposes upon the last equalized county assessment-rolls for said Alameda and Contra Costa Counties was \$345,208,704; that the number of taxpayers on said rolls as to property assessed within said district for district purposes was and now is approximately 190,000.

IV.

That James H. Boyer, Alfred Latham and Grand D. Miller [29] are, and ever since the said 22d day of May, 1923, have been, duly elected, qualified and acting directors of said East Bay Municipal Utility District, and that George C. Pardee and David P. Barrows are, and ever since the 13th day of November, 1924, have been, duly elected, qualified and acting directors of said district, and that

said James H. Boyer, Alfred Latham, Grant D. Miller, George C. Pardee and David P. Barrows constitute the board of directors thereof, and that said George C. Pardee is the president of said district, and John H. Kimball is the secretary thereof.

V.

That at all the times hereinafter mentioned the defendant Twohy Brothers Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Oregon and authorized to do and doing business in the State of California.

That at all the times hereinafter mentioned the defendant J. F. Shea Company was and now is a copartnership composed of the defendants J. F. Shea, Charles A. Shea and G. J. Shea.

VI.

That the plaintiff's aforesaid interest in real estate in said City of Berkeley is subject to taxation by said defendant East Bay Municipal Utility District under the terms of the Act under which said district is organized and that said interest in said real estate has already been taxed by said defendant, said East Bay Municipal Utility District, and will be continued to be taxed thereby.

VII.

That by resolution of the board of directors of said [30] East Bay Municipal Utility District adopted at a meeting thereof held on the 21st day of August, 1924, said board of directors determined

that the public interest and necessity demanded the acquisition of a source or sources of water supply for said district and other properties to be used by said district for acquiring and impounding water for said district and for conveying the same thereto; that thereafter said Board of Directors procured some plans and estimates of the cost of original construction and completion by said district of said utility and had the same prepared for it in the form of a report by an engineer; that thereupon said board of directors adopted said plans and estimates and said report and with reference to said report found and designated the Mokelumne River in the State of California as a source of water supply for said district; that said plans and estimates and said report, among other things, covered the construction of a dam on the Mokelumne River at a point called Lancha Plana, the creation of a reservoir back of said dam covering more than two thousand acres of land and holding more than two hundred thousand acre feet of water, and the construction of conduits from said dam to the San Pablo Reservoir at the eastern boundary of said district, all for the purpose of storing and diverting water from said Mokelumne River to said San Pablo Reservoir to supply said district with water; that said estimates specified thirty-nine million dollars (\$39,000,000) as the estimated cost of said project including dam, reservoir site, rights of way, pumping plants, and conduits.

VIII.

That said plans and estimates provide that said conduits [31] shall proceed from the point below the Lancha Plana dam in a direct line west of the City of Stockton in the County of San Joaquin, State of California, to a point near the town of Holt in said County of San Joaquin, thence in a general westerly direction in a straight line parallel to the main line of the Atchison, Topeka and Santa Fe Railroad to a point near Orwood in the County of Contra Costa, State of California, and thence along various courses and distances to said San Pablo Reservoir; that said conduits, in passing by said City of Stockton and proceeding to said point at Orwood, will cross the main channel of the San Joaquin River, Middle River, Old River and numerous sloughs, canals, and drainage and irrigation ditches in the San Joaquin Delta; and that between said points said conduits will be within the boundaries of the Sacramento and San Joaquin Drainage District as established by the Legislature of the State of California under an Act approved December 24, 1911, entitled as follows: "An act approving the report of the California Debris Commission transmitted to the speaker of the House of Representatives by the Secretary of War on June 27th, 1911, directing the approval of plans of reclamation along the Sacramento River or its tributaries or upon the swamp lands adjacent to said river, directing the state engineer to procure data and make surveys and examinations for the purpose of perfecting the plans contained

in said report of the California Debris Commission and to make report thereof, making an appropriation to pay the expenses of such examinations and surveys, and creating a reclamation board and defining its powers"; that said district has not applied to said Reclamation Board of the State of California for a permit to construct said conduits through said Sacramento and San [32] Joaquin Drainage District or through said San Joaquin Delta or along the line herein specified and designated in said plans and estimates and that it is not known whether or not said Reclamation Board will grant permission to said district to build said conduits across said San Joaquin Delta along said specified line or along any other line.

IX.

That said project covered by said plans and estimates, by and through the construction of said dam, involves the appropriation and use of several hundred acres of lands belonging to the United States of America; that as prerequisite to the construction of said dam and reservoir and the maintenance thereof the said district has applied to the Federal Power Commission for a permit and license to appropriate and use said lands of the United States of America for the purpose of said project under the terms of the Federal Water Power Act approved June 10, 1920, and that said application to said Federal Power Commission is now pending and undetermined; that said dam, if constructed, will be located upon said lands of the United States and said reservoir above said dam will also be

partly located upon said lands of the United States; that the only available dam site which is suitable for the purposes of the district and for the construction of a dam on the Mokelumne River to provide said reservoir at said reservoir site is on said land of the United States; that the construction of any dam on said Mokelumne River which will create said reservoir will necessarily include said lands of the United States in said reservoir.

X.

That in order to secure the right to appropriate waters [33] of the Mokelumne River the said district has also applied to Board of Public Works, State of California, Division of Water Rights for a permit to appropriate water of said Mokelumne River at said Lancha Plana dam site and said application for said permit is now pending before said Division of Water Rights.

XI.

That said district has not obtained at this time and does not own any right to appropriate any waters of the Mokelumne River and has not yet obtained and does not have any authority whatever from the United States of America to make use of said lands of said United States of America.

XII.

That said application before the Division of Water Rights and said Federal Power Commission have been protested by numerous persons, corporations and reclamation districts and formal hearings thereon, at the time of filing the bill of com-

plaint herein, were being conducted jointly by said Division of Water Rights and said Federal Power Commission in the City of Sacramento, State of California; that since the filing of said bill of complaint said formal hearings have been concluded but no decisions thereon have been made and what the outcome thereof will be is entirely unknown.

XIII.

That said project covered by said plans and estimates is not a project for the production of power but is a project solely for the bringing of additional water supplies from the Mokelumne River to said district.

XIV.

That said conduits between the points mentioned in Paragraph VIII of this bill of complaint will cross three [34] navigable rivers, to wit: The main channel of the San Joaquin River, Middle River, and the Old River and several navigable sloughs and that interstate as well as intrastate commerce is carried on, upon, along and over said rivers and channels between Stockton, Antioch, San Francisco, and other towns and cities within the Counties of Sacramento, San Joaquin, Contra Costa, Napa, Marin, Alameda and San Francisco; that said East Bay Municipal Utility District has not obtained from the War Department of the United States of America any permit to build any conduit across said navigable channels and it is not now known whether or not said district may ever be able to acquire said permit.

XV.

That said district has not acquired a permit from the California Debris Commission for the construction of said conduit between the points mentioned in said Paragraph VIII and that it is not known whether or not said district will ever be permitted by said California Debris Commission to build said conduit across San Joaquin Delta.

XVI.

That at the time of filing the bill of complaint herein the plaintiff did not know the names of the defendants who were sued herein as First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, John Doe Company, Richard Roe Company, Sam Stowe Company, James Roe Company and Thomas Doe Company and so alleged in Paragraph XVI of said bill of complaint and requested that when the true names of said defendants had been ascertained then said bill of complaint might be amended accordingly. [35]

That since the filing of said bill of complaint this plaintiff has learned that the true name of defendant "Twohy Bros." is "Twohy Brothers Company," a corporation, that the true name of First Doe is J. F. Shea, that the true name of Second Doe is Charles A. Shea, that the true name of Third Doe is G. J. Shea, that the true name of Fourth Doe is Geo. K. Thompson and that the true name of John Doe Company is J. F. Shea Company, a copartnership; that accordingly this plaintiff desires and requests that said true names of said defendants as herein set forth shall be

substituted for said fictitious names of said defendants and that any further proper process shall issue out of and under the seal of this court directed to said defendants commanding them to appear and make answer to this amended and supplemental bill of complaint and to perform and abide by such order and decree herein as to this Court may seem required by the principles in equity and good conscience.

XVII.

That several months prior to the filing of the bill of complaint herein (said bill having been filed on September 25, 1925) said district called for bids for the construction of said project in accordance with said plans and estimates and specified that said bids would be opened on the 4th day of September, 1925; that prior to the 4th day of September, 1925, numerous bids were made to said district for the construction of said project as an entirety and for the construction of various portions thereof; that all of the defendants named in the title of this amended and supplemental bill, except said defendant district and the defendant officials thereof, made bids on said project or various portions and parts thereof [36] for the construction thereof; that said bids were opened on said 4th day of September, 1925, but that at the time of the filing of the bill of complaint herein on said September 25, 1925, no contracts had been awarded to said defendants, or to any of them, or to any of said parties; that between said 4th day of September, 1925, and said September 25, 1925,

the engineer and officials of said district studied said bids for the purpose of determining to whom contracts should be awarded and that said engineer and said officials of said district; on the said September 25, 1925, had become prepared and were ready to award contracts on said bids, as based upon investigations and studies made by them of and concerning said bids; that subsequent to the filing of the bill of complaint herein on September 25, 1925, said Board of Directors of said district held a meeting on the evening of said day to take official action with reference to said bids and the awarding of contracts thereon, and that said meeting of said Board of Directors was called for the express purpose of awarding contracts on said bids with reference to the construction of said project and parts and portions thereof; that on the late afternoon, or early evening, of said September 25, 1925, the defendant district and defendant officials thereof, were served with the bill of complaint in this suit and with process issued therein and that the said service of the bill of complaint and process occurred prior to the awarding of contracts as hereinafter stated; that at said meeting of said Board of Directors of said District, which said meeting was attended by all of the members of said Board of Directors, said Board of Directors, by the unanimous vote of all members thereof, awarded contracts [37] on said bids as are particularly hereinafter set forth and that thereafter, in accordance with said awards by said Board of Directors, contracts were let by said district to

various defendants named in the title of this amended and supplemental bill on dates and for the purposes and at contract prices as follows:

FIRST. That on the 6th day of November, 1925, the said district, as first party, entered into a contract with Lynn S. Atkinson, Jr., as second party, for the construction and completion by second party of items 1 to 16, inclusive, covering the Lancha Plana Dam, outlets through dam, including gates and power-house (a part of the Mokelumne River Project of said District), the same being schedule 10 of Plan 1 of the specifications covering the said work; that the contract price was specified in said contract as \$3,081,378, more or less, in accordance with said prices and bid of second party, and said contract further contained the following provision:

“Anything in said specifications to the contrary notwithstanding the work provided for by this contract shall be commenced by second party within thirty days after but not before receipt from the district in writing of notice so to do in conformity with the provisions of this paragraph and the period within which the work shall be completed as provided in the said specifications shall begin with the receipt by second party of such notice. In view of the fact that the application of the district for the use of the lands *which* which said dam is to be constructed is still pending and undecided before the Federal Power Commission and in view of the further fact that it may

become necessary and desirable to make some substantial alterations in the plans and specifications for said dam, it is distinctly [38] understood and agreed that the said district need not give the said notice in writing to begin said work for a period of 12 months from and after the date hereof and during said period of twelve months may at its option terminate and cancel this agreement without liability in any way to the said second party. If the said notice to begin said work be not given within said period of twelve months, then in that event at the expiration of said time the said contractor may at his option terminate and cancel this agreement without liability to the district."

SECOND. That under date of November 6, 1925, said district, as first party, and the defendants Charles Thompson and George K. Thompson, as second parties, entered into a contract whereby said second parties agreed to construct and complete Items 1 to 7 inclusive, covering the Lancha Plana tunnel, approaches and outlet (all part of the Mokelumne River Project of said District) the same being Schedule 9 of Plan 1 of the specifications covering the said work; that said contract specified, as the contract price, the sum of \$624,045, more or less, in accordance with prices and bid of second party, and said contract also contained the same provisions which are set forth as contained in the contract of the same date between said District and the defendant, Lynn S. Atkinson, Jr.

THIRD. That under date of September 29, 1925, the District, as first party, and defendants Twohy Brothers Company, an Oregon corporation, and J. F. Shea, Charles A. Shea and G. J. Shea, individually and as copartners, and J. F. Shea Company, a copartnership, all as second parties, entered into a contract whereby said second parties agreed to complete and install a pipe aqueduct from Lancha Plana tunnel to Station [39] 950, the same being Items 12 to 24, inclusive, of Schedule "F" of Plan 2, and Items 1-C and 2-C of the contractors alternate Schedule "F" under the provisions of paragraph 116 of the District's specifications; that the contract price as specified in said contract was the sum of \$1,671,697.50, more or less, in accordance with the prices and bid of said second parties, and said contract further contained provisions as follows:

"The work provided for by this contract shall be actually commenced by second parties within thirty days after and not before receipt from the district in writing of notice so to do in conformity with the provisions of this paragraph, and the period within which the work shall be completed, as provided in the specifications, shall begin with the date of receipt by the second parties of such notice. If the notice above mentioned be given within a period of three months from and after the date of this contract all the terms and conditions hereof shall remain in full force and effect. . . .

Provided, however, that in lieu of notice to

begin said work the District may elect to cancel and terminate this agreement and it shall have the right so to do at any time before ordering said work to begin; after six months from the date hereof but not before, and in the event no notice to begin such construction is given by the district the contractors shall have the right to terminate this contract. The election herein given the respective parties shall be exercised by each of the respective parties serving written notice thereof on the other."

FOURTH. That likewise on said 29th day of September, [40] 1925, said parties just above mentioned in subparagraph third hereof entered into another contract whereby said second parties agreed to complete and install a pipe aqueduct from the eastern edge of peat lands station 950 to station 1,840, same being Items 5 to 18, inclusive, of Schedule "E" of Plan 2 and Items 1-C and 2-C of the contractors Alternate Schedule "E" under the provisions of paragraph 116 of the district's specifications covering the work; that the contract price specified in said contract was the sum of \$2,007,361.50, more or less, in accordance with the prices and bid of said second parties; that said contract also contained the provisions more particularly set forth in said subdivision third hereof.

FIFTH. That likewise on said September 29, 1925, said parties mentioned in subdivision Third of this paragraph entered into another contract whereby said second parties agreed to complete and install a pipe aqueduct from the western edge of

peat lands to the eastern edge of peat lands station 1,840 to station 2,704, the same being Items 2 to 18, inclusive, of Schedule "D" and Items 1-C of contractor's Alternate Schedule "D" under the provisions of paragraph 116 of the district's specifications covering the work; that the contract price specified in said contract was \$2,112,820, more or less, in accordance with the prices and bid of the said second parties; that said contract also contained said provision which is particularly set forth in subdivision third of this paragraph, save and except that said provision was specifically made to apply only to that portion of the work covered by said contract which is east of the west bank of Old River.

That none of the parties to any of said contracts [41] have given any notices of termination of any thereof, and that all of said contracts remain as fully in force and effect now as at the time of the execution thereof; that as yet no work whatever has been done under any of said contracts and that no performance of any of said contracts has taken place, or is now taking place; that said contracts cover all of said Mokelumne River Project of the said defendant district which is east of the west bank of Old River.

XVIII.

That a majority of the voters and not a majority of the electors of said district has approved the construction of said project and has also approved the issuance of bonds of said district to the extent of thirty-nine million dollars (\$39,000,000) to pay

for the construction thereof and that said district is now ready to finance the construction of said project by the issuance and sale of said bonds; that, as provided by law, the board of directors of said district has provided and established by resolution that said bonds shall be negotiable in form and of the character known as serial and shall be 39,000 in number, numbered consecutively from 1 to 39,000, both inclusive, of the denomination of \$1,000 each, and that said bonds shall bear interest at five per cent per annum payable semi-annually, and that said bonds shall be dated January 1, 1925, and that 975 of said bonds in consecutive numerical order from lower to higher shall mature on January 1st of each of the years 1935 to 1974, inclusive.

That several million dollars of said bonds have been prepared, signed and sold as required by law and the proceeds of said bonds are now being used to pay for work being done [42] under contracts other than the contracts herein described; that the entire contract prices for the performance of said five contracts by said contractors will be paid from proceeds obtained by future sales of said bonds.

XIX.

That at the time of filing the bill of complaint herein there were also applications pending before said Federal Power Commission and said Division of Water Rights by others than said defendant district for the use of the waters of said Mokelumne River for power purposes by the construction of a dam and reservoir at Lancha Plana and that said applications were and are prior in time and right

to said application of said defendant district; that at the time of filing of said bill of complaint said other applications were being heard as part of the same hearing mentioned in Paragraph XII of this amended and supplemental bill of complaint.

XX.

That the plaintiff does *not the* citizenship or residence of any of the defendants other than the said district, the officials thereof, and the defendant Twohy Brothers Company; that the defendant officials of said district are citizens and residents of the State of California and the United States of America and reside within the defendant district.

XXI.

That the amount of each bid of each contractor to whom any contract has been let by said district, as elsewhere herein described, for the construction of any part or portion of said project as provided by contract with the defendant district exceeded the sum or value of \$3,000.00, exclusive of interest and costs. [43]

XXII.

That this suit in equity is brought on behalf of plaintiff and of all of the taxpayers for district purposes who own any property within said district which is subject to taxation and is taxed for said district purposes and is brought and prosecuted to protect said district against an illegal application and disposition of the funds and property of the district by the directors and officials thereof; that said taxpayers are entirely too

numerous to be made parties to this suit; that their interest in the matters herein involved and alleged is identical with the interest of plaintiff in said matters; that plaintiff is not an officer of the State of California, or of the United States, or of any department, board, or commission thereof, and does not bring this suit on behalf, or by the authority of any such officer, department, board or commission.

XXIII.

That the allegations made in this amended and supplemental bill with reference to the assessed value of said house and lot, the entire assessed valuation of property within the district, and the taxes heretofore levied by the district against said house and lot are made for the information of the court solely in response to a specific demand for said information by the defendant district and the defendant officials thereof under Equity Rule No. 20; and that said allegations are not made by plaintiff to show that the necessary jurisdictional amount is involved in this suit.

XXIV.

That if any permit or license is issued to defendant [44] district by the said Federal Power Commission or if said district is notified by said Federal Power Commission that a permit or a license will be issued to it then said district by and through the unanimous action of the defendant directors and officials thereof, will forthwith notify said several contractors to proceed with the performance of said five contracts, and thereby the district will

proceed with the construction of its entire project east of the west bank of Old River and will become firmly bound in all events under said contracts before any action can be taken whereby said district, or its directors, or officials, will be prevented from proceeding with said contracts; and thereupon said district will commence to pay said contractors, from time to time as their work progresses, portions of the respective contract prices as said contractors through part performance shall become entitled to said progress payments.

XXV.

That answer hereto under oath is hereby expressly waived.

XXVI.

That the statute under which the defendant district is organized does not authorize or empower said district to give away, sell, or otherwise dispose of any property or funds of the district which are necessary for the purposes and uses of the district and does not authorize or empower said district to subject to a forfeiture or loss or a taking from the district any property or funds of the district which are necessary for the purposes and uses of the district; that if said Federal Power Commission shall issue any permit or license to said defendant district and said defendant shall [45] construct said dam and reservoir and said tunnel and aqueduct under the terms of said contracts, or otherwise, it will be questionable, because of the terms of the Federal Water Power Act and the terms of the statute under which defendant is

organized, *first*, whether or not the said dam, reservoir, tunnel and aqueduct to be constructed under said contracts can be lawfully constructed, owned, maintained, or used as against the United States of America by defendant district, *second*, whether or not any such permit or license will be legal and valid, *third*, whether or not the taking of such permit or license and any compliance therewith and any construction of dam, reservoir, tunnel and conduit thereunder, will not unlawfully subject the property and funds of the district, which are necessary for the purposes and uses of the district, to a forfeiture or loss, or a taking from the district through the United States of America.

That plaintiff therefore alleges that the following federal questions are involved herein:

(a) Whether or not the said dam, reservoir, tunnel and aqueduct to be constructed under said contracts can be lawfully constructed, owned, maintained or used as against the United States of America.

(b) Whether or not any such permit or license will be legal and valid.

(c) Whether or not the taking of such permit or license and any compliance therewith and any construction of dam, reservoir, tunnel and conduit thereunder will not unlawfully subject the property and funds of the district, which are necessary for the purposes and uses of the district, to a forfeiture or loss, or a taking from the district through the [46] United States of America.

(d) Whether or not the proposed conduit can be built across said San Joaquin Delta as herein described without the permission of the California Debris Commission first had and obtained.

(e) Whether or not the proposed conduit can be built across said San Joaquin Delta as herein described without the consent of the War Department of the United States first had and obtained.

(f) Whether or not the Federal Power Commission can issue any permit or license to said district for the use of said federal lands for the purposes for which said district proposes to use the same.

(g) Whether or not the Federal Power Commission can issue a license under the Federal Water Power Act where the applicant, under its organic act, cannot accept the provisions of Section 14 of the Federal Water Power Act.

(h) Whether or not said Federal Power Commission can issue a license to an applicant which, under its organic act, cannot subject its property to the acquisition, forfeiture, control and appropriation by the United States as provided under the terms of the Federal Water Power Act.

WHEREFORE, plaintiff prays judgment and decree of this court:

1. That any contracts let by said defendant district prior to the time that said district has obtained all of the permits and licenses herein mentioned are void and without effect.

2. That said district shall not let any contracts for the construction of said project or any portion

or portions thereof until said district has obtained all of the licenses and [47] permits herein mentioned.

3. That said Federal Power Commission is unable to issue and the defendant district is unable to accept any license under the Federal Water Power Act for the proposed project of the defendant district and that defendant district shall not construct said Lancha Plana Dam and reservoir and shall not build said conduit therefrom.

4. That the defendant district herein shall not let any contract or contracts or expend any funds for the construction of said project or any part or portion thereof.

5. That the defendant officials of said district shall likewise be enjoined with said district and that the other defendants herein shall likewise be enjoined from entering into any contracts with said district for the construction of said project or any part or portion thereof.

6. That each and all of the five contracts described in the foregoing amended and supplemental bill of complaint are void and invalid and shall not be performed in whole or in part, and that each party to said contracts shall give to the other party thereto the necessary notice of termination, as provided by the terms of said contracts.

7. That the plaintiff herein shall have such other relief as the equity of the case may require and to this Honorable Court may seem meet.

Plaintiff also prays that proper process shall issue forthwith out of and under the seal of this

Honorable Court directed to said defendants, and each of them, commanding them to appear and make answer to this amended and supplemental bill of complaint and to perform and abide by such order and decree herein as to this court may seem required by the [48] principles in equity and good conscience.

S. D. PINE,
Plaintiff.

D. HADSELL,
JOE G. SWEET,
E. A. INGALLS,
Attorneys for Plaintiff.

State of California,
City and County of San Francisco,—ss.

On this 5th day of March, 1926, before me came S. D. Pine, the plaintiff named in the foregoing bill, and he, being by me duly sworn, did depose and say:

That he has read the foregoing bill and knows its contents and that the same is true of his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

S. D. PINE.

Subscribed and sworn to before me this 5th day of March, 1926.

[Seal] MINNIE V. COLLINS,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt of the within papers is hereby acknowledged this 5th day of March, 1926.

T. P. WITTSCHEN,
Attorney for Certain Defendants.

[Endorsed]: Filed Mar. 10, 1926. [49]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the twentieth day of March, in the year of our Lord one thousand nine hundred and twenty-six. Present: the Honorable FRANK H. KERRIGAN, District Judge.

[Title of Cause.]

MINUTES OF COURT—MARCH 20, 1926—
ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT AND GRANTING DEFENDANTS' MOTION TO DISMISS.

Plaintiff's motion for leave to file amended and supplemental complaint and defendants' motion to dismiss, heretofore argued and submitted, being now fully considered, it is ordered that plaintiff's motion for leave to file amended and supplemental complaint be and the same is hereby denied and defendants' motion to dismiss be and the same is hereby granted, and that a decree of dismissal be entered herein accordingly. [50]

(Title of Court and Cause.)

DECREE DISMISSING ACTION.

This cause having been heard upon plaintiff's bill of complaint and upon motion of defendants East Bay Municipal Utility District and the officials thereof to dismiss the same, and upon plaintiff's motion for leave to file amended and supplemental bill of complaint, and said motion to file said amended and supplemental bill of complaint having been denied and said motion to dismiss said bill of complaint having been sustained and the Court having ordered that the decree of dismissal be entered accordingly,—

NOW, THEREFORE, it is by the Court ORDERED, ADJUDGED and DECREED that said bill of complaint and the above-entitled action be and the same are hereby dismissed.

Dated: April 22d, 1926.

FRANK H. KERRIGAN,
District Judge.

[Endorsed]: Filed and entered Apr. 22, 1926.
[51]

(Title of Court and Cause.)

PETITION FOR APPEAL TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

The above-named plaintiff, conceiving himself aggrieved by the decree made and entered on the 22d

day of April, 1926, in the above-entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith and he prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

D. HADSELL,
JOE G. SWEET,
E. A. INGALLS,
HADSELL, SWEET & INGALLS,
Attorneys for Plaintiff.

Dated: San Francisco, Calif., June —, 1926.

The foregoing claim of appeal is allowed.

FRANK H. KERRIGAN,
United States District Judge.

Dated: San Francisco, Calif., June 5, 1926.

[Endorsed]: Filed June 5, 1926. [52]

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

COMES NOW S. D. Pine and, having asked for an allowance of an appeal from the decree herein against him dismissing his bill of complaint and dismissing the above-entitled action, assigns for error in said decree and the proceedings of the above-entitled court therein the following:

I.

That the Court, in proceeding on the ground that it was not in furtherance of justice to grant plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint, erred in denying said motion.

II.

That the Court, in proceeding upon the ground that it was not within the substantial rights of plaintiff to have plaintiff's motion granted for leave to file his proposed amended and supplemental bill of complaint, erred in denying said motion.

III.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint.

IV.

That the Court erred in granting the motion of defendants, East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham individually and as Directors of the East Bay Municipal Utility District, John H. Kimball, individually and as secretary of said District and of the Board of Directors thereof, and [53] George C. Pardee, as president of the Board of Directors of said District to dismiss plaintiff's bill of complaint.

V.

That the Court erred in dismissing plaintiff's bill of complaint.

VI.

That the Court erred in dismissing the action.

VII.

That the Court erred in dismissing plaintiff's bill of complaint upon the ground that the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00).

VIII.

That the Court erred in dismissing plaintiff's bill of complaint on the ground that the matter in controversy does not arise under the laws of the United States.

IX.

That the Court erred in dismissing plaintiff's bill of complaint upon the ground that the defendant East Bay Municipal Utility District can legally take and act under a license granted by the Federal Power Commission under the Federal Water Power Act.

X.

That the Court erred in dismissing plaintiff's bill of complaint upon the ground that a license issued to the defendant East Bay Municipal Utility District by the Federal Power Commission under the terms of the Federal Water Power Act would not be invalid.

XI.

That the Court erred in dismissing plaintiff's bill [54] of complaint upon the ground that the construction of dam and reservoir upon lands of the United States by the defendant East Bay Municipal

Utility District under a license issued to said defendant District by the Federal Power Commission under the terms of the Federal Water Power Act would not be a waste of funds and property of the District.

XII.

That the Court erred in dismissing plaintiff's bill of complaint upon the ground that this suit is brought by plaintiff for plaintiff's direct benefit and is not brought for and on behalf of and to protect the defendant East Bay Municipal Utility District.

XIII.

That the Court erred in dismissing plaintiff's bill of complaint upon the ground that even if a license issued to the defendant East Bay Municipal Utility District by the Federal Power Commission under the terms of the Federal Water Power Act were invalid, the construction of a dam and reservoir by the defendant District upon lands of the United States, as proposed by project of the district, would not be a waste of the funds and property of the District.

XIV.

That the Court erred in dismissing plaintiff's bill of complaint upon the ground that the question whether or not the construction of a dam and reservoir by the defendant East Bay Municipal Utility District on lands of the United States involves a waste of the funds and property of the District does not depend upon or arise under the laws of the United States.

XV.

That the Court erred in dismissing plaintiff's bill of [55] complaint upon the ground that it does not state facts sufficient to constitute a valid cause of action in equity.

XVI.

That the Court erred in dismissing the action upon the various grounds which are specified in Paragraphs VII to XV inclusive of this assignment of errors as the grounds upon which the Court dismissed plaintiff's bill of complaint.

XVII.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that said proposed amended and supplemental bill of complaint does not state facts sufficient to constitute a valid cause of action in equity.

XVIII.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3,000.00).

XIX.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that the matter in controversy does not arise under the laws of the United States.

XX.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that the defendant East Bay Municipal Utility District can legally take and act under a license granted by the Federal Power Commission under the terms of the Federal [56] Water Power Act.

XXI.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that the license issued to the defendant East Bay Municipal Utility District by the Federal Power Commission under the terms of the Federal Water Power Act would not be invalid.

XXII.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that the construction of a dam and reservoir upon lands of the United States by the defendant East Bay Municipal Utility District under a license issued to said defendant District by the Federal Power Commission under the terms of the Federal Water Power Act would not be a waste of the funds and property of the district.

XXIII.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that

this suit is brought by plaintiff for plaintiff's direct benefit and is not brought for and on behalf and to protect the defendant East Bay Municipal Utility District.

XXIV.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that even if a license issued to the defendant East Bay Municipal Utility District, by the Federal Power Commission under the terms of the Federal Water Power [57] Act were invalid the construction of a dam and reservoir by the defendant District upon lands of the United States, as proposed by the project of the district, would not be a waste of the funds and property of the district.

XXV.

That the Court erred in denying plaintiff's motion for leave to file his proposed amended and supplemental bill of complaint upon the ground that the question whether or not the construction of a dam and reservoir by the defendant East Bay Municipal Utility District upon lands of the United States involves a waste of the funds and property of the district does not depend upon or arise under the laws of the United States.

D. HADSELL,
JOE G. SWEET,
E. A. INGALLS,
HADSELL, SWEET & INGALLS,
Attorneys for Plaintiff.

(Title of Court and Cause.)

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF BOND ON APPEAL.

WHEREAS, heretofore on the 22d day of April, 1926, the above-entitled court, on motion of the defendants above named, namely: East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as directors of the East Bay Municipal Utility District, John H. Kimball, individually and as secretary of said district and of the Board of Directors thereof, and George C. Pardee, as president of the Board of Directors of said District, did make and enter its decree wherein and whereby the Court ordered, adjudged and decreed that plaintiff's bill of complaint and the above-entitled action be and the same was thereby dismissed; and

WHEREAS the above-named plaintiff has filed with this Court in the above-entitled matter his petition for an appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit and with said petition has filed an assignment of errors,—

NOW, THEREFORE, IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said decree be and the same is hereby allowed.

IT IS FURTHER ORDERED that the bond on appeal will be in the penalty of Two Hundred and

Fifty Dollars to answer all costs if appellant fail to make his plea good.

FRANK H. KERRIGAN,
United States District Judge.

Dated: San Francisco, Calif., June 5, 1926.

[Endorsed]: Filed June 5, 1926. [59]

(Title of Court and Cause.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, S. D. Pine, as principal, and Union Indemnity Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana and authorized to do and doing business in the State of California under the laws thereof, as surety, are held and firmly bound unto East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as directors of East Bay Municipal Utility District, John H. Kimball, individually and as secretary of said District and of the Board of Directors thereof, and George C. Pardee, as president of the Board of Directors of said District, in the full and just sum of Two Hundred Fifty Dollars (\$250.00) to be paid to the said East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as directors of East Bay Municipal Utility District,

John H. Kimball, individually and as secretary of said District, and of the Board of Directors thereof, and George C. Pardee, as president of the Board of Directors of said District, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, assigns, and heirs, executors, and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this 8th day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-six.

WHEREAS, lately at a District Court of the United States [60] for the Northern District of California, in a suit depending in said court between S. D. Pine, as plaintiff, and East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as directors of East Bay Municipal Utility District, John H. Kimball, individually and as secretary of said District and of the Board of Directors thereof, George C. Pardee, as president of the Board of Directors of said District, Stephen E. Keiffer, Twohy Bros., T. E. Connolly, Smith Brothers, Pelton Company, Charles K. Thompson, Lynn S. Atkinson, Jr., First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, John Doe Company, Richard Roe Company, Sam Stowe Company, James Roe Company and Thomas Doe Company, defendants, a judgment was rendered against the said S. D. Pine and the said

S. D. Pine having obtained from said court an appeal in said suit to reverse the judgment in the aforesaid suit, and a citation directed to the said East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as directors of East Bay Municipal Utility District, John H. Kimball, individually and as secretary of said District and of the Board of Directors thereof, and George C. Pardee as president of the Board of Directors of said District, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, that if the said S. D. Pine shall prosecute said appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force [61] and virtue.

S. D. PINE.

UNION INDEMNITY COMPANY.

[Seal]

By GAULDEN L. SMITH,

Agent and Attorney-in-fact.

Acknowledged before me the day and year first above written.

MINNIE V. COLLINS.

State of California,

City and County of San Francisco,—ss.

On this 8th day of June, in the year one thousand nine hundred and twenty-six, before me,

the day and year in this certificate first above written.

[Seal] MINNIE V. COLLINS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed June 8, 1926. [63]

(Title of Court and Cause.)

PRAECIPE FOR RECORD ON APPEAL.

To the Clerk of the Above-entitled Court:

YOU ARE HEREBY REQUESTED to prepare a transcript of record in the above-entitled action to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal heretofore allowed in the above-entitled action and to include in said transcript of record the following and no other papers or exhibits, to wit:

1. Plaintiff's complaint in equity to enjoin the letting of contracts.
2. Notice of motion of defendants, East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, individually and as directors of the East Bay Municipal Utility District, John H. Kimball, individually and as secretary of said district and of the Board of Directors thereof, and George C. Pardee, as president of the Board of Directors of said Dis-

- trict, for order dismissing plaintiff's complaint.
3. Motion of said defendants to dismiss the suit, and affidavit of George C. Pardee, attached thereto.
 4. Notice of said defendants of motion for further and better particulars under Equity Rule No. 20.
 5. Motion of said defendants for further and better particulars under Equity Rule No. 20.
 6. Notice of motion by plaintiff for leave to file amended and supplemental bill of complaint. [64]
 7. Motion of plaintiff for leave to file amended and supplemental bill of complaint.
 8. Plaintiff's proposed amended and supplemental bill of complaint in equity to enjoin the letting or performance of contracts, as same is attached to plaintiff's motion for leave to file the same.
 9. Minute order of Court denying plaintiff's motion for leave to file amended and supplemental bill of complaint and granting motion of said defendants to dismiss the action.
 10. Decree of Court dismissing action.
 11. Plaintiff's petition for appeal to the United States Circuit Court of Appeals for the Ninth Circuit.
 12. Plaintiff's assignment of errors.
 13. Order allowing appeal and fixing amount of

bond on appeal also bond on appeal and this praecipe.

14. Citation to said defendants to appear on appeal.

D. HADSELL,
JOE G. SWEET,
E. A. INGALLS,

Attorneys for Plaintiff and Appellant.

Dated: San Francisco, Calif., June 8th, 1926.

Receipt of a copy of the within request for preparation of record on appeal is hereby admitted this 11th day of June, 1926.

T. P. WITTSCHEN,
Attorney for Defendants Named Therein.

[Endorsed]: Filed June 14, 1926. [65]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing sixty-five (65) pages, numbered from 1 to 65, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$29.75; that the said amount

was paid by the plaintiff and that the original citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 23d day of June, A. D. 1926.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [66]

CITATION.

United States of America,—ss.

The President of the United States, to East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer and Alfred Latham, Individually and as Directors of the East Bay Municipal Utility District, John H. Kimball, Individually and as Secretary of Said District and of the Board of Directors Thereof, and George C. Pardee, as President of the Board of Directors of Said District, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein S. D. Pine is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why

speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Northern District of California, this 5th day of June, A. D. 1926.

FRANK H. KERRIGAN,
United States District Judge.

Received a copy of the within citation this 11th day of June, 1926.

T. P. WITTSCHEN,
Solicitor for Defendants.

[Endorsed]: Filed June 12, 1926. [67]

[Endorsed]: No. 4890. United States Circuit Court of Appeals for the Ninth Circuit. S. D. Pine, Appellant, vs. East Bay Municipal Utility District, George C. Pardee, Grant D. Miller, David P. Barrows, James H. Boyer, and Alfred Latham, Individually and as Directors of the East Bay Municipal Utility District, John H. Kimball, Individually and as Secretary of Said District, and of the Board of Directors Thereof, and George C. Pardee, as President of the Board of Directors of Said District, Appellees. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed June 23, 1926.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

